

AMENDED IN SENATE MAY 12, 2003

SENATE BILL

No. 464

Introduced by Senator Murray

February 20, 2003

~~An act to amend Section 2662 of the Probate Code, and to amend Sections 361 and 726 of the Welfare and Institutions Code, relating to minors. An act to amend Section 56341 of the Education Code, relating to special education.~~

LEGISLATIVE COUNSEL'S DIGEST

SB 464, as amended, Murray. ~~Minors: foster care residential treatment providers~~ *Special education: individualized education program: group home.*

Existing law requires a school district, special education local plan area, or county office of education to conduct meetings, through an individualized education program team, as specified, for the purposes of developing, reviewing, and revising the individualized education program of an individual with exceptional needs. Existing law also provides for the placement in foster care of minors who are declared dependent children of the court or wards of the court by a juvenile court.

This bill would require a school district, special education local plan area, or county office of education to also invite to the individualized education program team meetings a representative of the group home in those cases in which a pupil with exceptional needs has been placed in a group home by a juvenile court, as specified. To the extent local educational agencies would be required to perform additional duties, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law requires a court to appoint a responsible adult to make educational decisions for a minor when the court removes, or limits or suspends the powers of, a guardian or conservator of a minor ward or conservatee, as specified. A similar provision applies when the court limits the control to be exercised by a parent or guardian over a minor who has been adjudged a ward or dependent child of the juvenile court. Existing law authorizes a foster parent to make those decisions for a ward or dependent child placed in long-term foster care. An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions pursuant to these provisions. However, a foster parent may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to these provisions.~~

~~This bill would additionally authorize a foster care residential treatment provider who is the primary caregiver to make those educational decisions for a ward or dependent child placed in long-term foster care and would provide that person may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to those provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes.
State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

- 1 ~~SECTION 1. Section 2662 of the Probate Code is amended to~~
- 2 *SECTION 1. Section 56341 of the Education Code is*
- 3 *amended to read:*
- 4 56341. (a) Each meeting to develop, review, or revise the
- 5 individualized education program of an individual with
- 6 exceptional needs shall be conducted by an individualized
- 7 education program team.



(b) The individualized education program team shall include all of the following:

(1) One or both of the pupil's parents, a representative selected by a parent, or both, in accordance with the Individuals with Disabilities Education Act (20 U.S.C. Sec. 1400 et seq.).

(2) At least one regular education teacher of the pupil, if the pupil is, or may be, participating in the regular education environment. If more than one regular education teacher is providing instructional services to the individual with exceptional needs, one regular education teacher may be designated by the district, special education local plan area, or county office to represent the others.

The regular education teacher of an individual with exceptional needs shall, to the extent appropriate, participate in the development, review, and revision of the pupil's individualized education program, including assisting in the determination of appropriate positive behavioral interventions and strategies for the pupil and supplementary aids and services, and program modifications or supports for school personnel that will be provided for the pupil, consistent with paragraph (3) of subsection (a) of Section 300.347 of Title 34 of the Code of Federal Regulations.

(3) At least one special education teacher of the pupil, or if appropriate, at least one special education provider of the pupil.

(4) A representative of the district, special education local plan area, or county office who meets all of the following:

(A) Is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of individuals with exceptional needs.

(B) Is knowledgeable about the general curriculum.

(C) Is knowledgeable about the availability of resources of the local educational agency.

(5) An individual who conducted an assessment of the pupil or who is knowledgeable about the assessment procedures used to assess the pupil, and is familiar with the assessment results or recommendations. The individual shall be qualified to interpret the instructional implications of the assessment results. The individual may be a member of the team described in paragraphs (2) to (6), inclusive.

(6) At the discretion of the parent, guardian, or the district, special education local plan area, or county office, other individuals who have knowledge or special expertise regarding the pupil, including related services personnel, as appropriate. The determination of whether the individual has knowledge or special expertise regarding the pupil shall be made by the party who invites the individual to be a member of the individualized education program team.

(7) Whenever appropriate, the individual with exceptional needs.

(c) For a pupil suspected of having a specific learning disability, at least one member of the individualized education program team shall be qualified to conduct individual diagnostic examinations of children, such as a school psychologist, speech-language pathologist, or remedial reading teacher. At least one team member other than the pupil's regular teacher shall observe the pupil's academic performance in the regular classroom setting. In the case of a child who is less than schoolage or out of school, a team member shall observe the child in an environment appropriate for a child of that age.

(d) (1) In the case of transition services, the district, special education local plan area, or county office shall invite an individual with exceptional needs of any age to attend his or her individualized education program meeting if a purpose of the meeting will be the consideration of either, or both, of the following:

(A) The individual's transition service needs under subdivision (a) of Section 56345.1.

(B) The needed transition services for the individual under subdivision (b) of Section 56345.1.

(2) If the individual with exceptional needs does not attend the individualized education program meeting, the district, special education local plan area, or county office shall take steps to ensure that the individual's preferences and interests are considered.

(3) When implementing the requirements of subdivision (b) of Section 56345.1, the district, special education local plan area, or county office also shall invite to the individualized education program team meetings a representative that is likely to be responsible for providing or paying for transition services. If an agency invited to send a representative to a meeting does not do so,

the district, special education local plan area, or county office shall take other steps to obtain participation of the other agency in the planning of any transition services.

(e) A district, special education local plan area, or county office may designate another local educational agency member of the individualized education program team to serve also as the representative required pursuant to paragraph (4) of subdivision (b) if the requirements of subparagraphs (A), (B), and (C) of paragraph (4) of subdivision (b) are met.

(f) *In the case of a pupil with exceptional needs who has been placed in a group home, as defined in subdivision (g) of Section 80001 of Title 22 of the California Code of Regulations, by the juvenile court pursuant to Section 300, 601, or 602 of the Welfare and Institutions Code, the district, special education local plan area, or county office shall also invite to the individualized education program team meetings a representative of the group home.*

SEC. 2. *Notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars (\$1,000,000), reimbursement shall be made from the State Mandates Claims Fund.*

read:

~~2662. Whenever the court grants a petition removing the guardian or conservator of a minor ward or conservatee or tendering the resignation of the guardian or conservator of a minor ward or conservatee, if the court does not immediately appoint a successor guardian or conservator, the court shall at the same time appoint a responsible adult to make educational decisions for the minor until a successor guardian or conservator is appointed. Whenever the court suspends or limits the powers of the guardian or conservator to make educational decisions for a minor ward or conservatee, the court shall at the same time appoint a responsible adult to make educational decisions for the minor ward or conservatee until the guardian or conservator is again authorized to make educational decisions for the minor ward or conservatee.~~

~~An individual who would have a conflict of interest in representing the child may not be appointed to make educational decisions. For purposes of this section, “an individual who would have a conflict of interest,” means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys’ fees for the provision of services pursuant to this section. A foster parent or a foster care residential treatment provider who is the primary caregiver may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.~~

~~SEC. 2. Section 361 of the Welfare and Institutions Code is amended to read:~~

~~361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs:~~

~~(1) The minor reaches 18 years of age, unless the child chooses not to make educational decisions for himself or herself, or is deemed by the court to be incompetent.~~

~~(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.~~

~~(3) The right of the parent or guardian to make educational decisions for the minor is fully restored.~~

~~(4) A successor guardian or conservator is appointed.~~

~~(5) The child is placed into long-term foster care pursuant to paragraph (3) of subdivision (g) of Section 366.21, Section 366.22, or Section 366.26, at which time the foster parent or a foster care residential treatment provider who is the primary~~

1 caregiver shall have the right to represent the child in educational
2 matters pursuant to Section 56055 of the Education Code.

3 ~~An individual who would have a conflict of interest in~~
4 ~~representing the child may not be appointed to make educational~~
5 ~~decisions. For purposes of this section, “an individual who would~~
6 ~~have a conflict of interest,” means a person having any interests~~
7 ~~that might restrict or bias his or her ability to make educational~~
8 ~~decisions, including, but not limited to, those conflicts of interest~~
9 ~~prohibited by Section 1126 of the Government Code, and the~~
10 ~~receipt of compensation or attorneys’ fees for the provision of~~
11 ~~services pursuant to this section. A foster parent or a foster care~~
12 ~~residential treatment provider who is the primary caregiver may~~
13 ~~not be deemed to have a conflict of interest solely because he or~~
14 ~~she receives compensation for the provision of services pursuant~~
15 ~~to this section.~~

16 ~~(b) Subdivision (a) may not be construed to limit the ability of~~
17 ~~a parent to voluntarily relinquish his or her child to the State~~
18 ~~Department of Social Services or to a licensed county adoption~~
19 ~~agency at any time while the child is a dependent child of the~~
20 ~~juvenile court, if the department or agency is willing to accept the~~
21 ~~relinquishment.~~

22 ~~(c) A dependent child may not be taken from the physical~~
23 ~~custody of his or her parents or guardian or guardians with whom~~
24 ~~the child resides at the time the petition was initiated unless the~~
25 ~~juvenile court finds clear and convincing evidence of any of the~~
26 ~~following:~~

27 ~~(1) There is a substantial danger to the physical health, safety,~~
28 ~~protection, or physical or emotional well-being of the minor or~~
29 ~~would be if the minor were returned home, and there are no~~
30 ~~reasonable means by which the minor’s physical health can be~~
31 ~~protected without removing the minor from the minor’s parents’~~
32 ~~or guardians’ physical custody. The fact that a minor has been~~
33 ~~adjudicated a dependent child of the court pursuant to subdivision~~
34 ~~(c) of Section 300 shall constitute prima facie evidence that the~~
35 ~~minor cannot be safely left in the custody of the parent or guardian~~
36 ~~with whom the minor resided at the time of injury. The court shall~~
37 ~~consider, as a reasonable means to protect the minor, the option of~~
38 ~~removing an offending parent or guardian from the home. The~~
39 ~~court shall also consider, as a reasonable means to protect the~~
40 ~~minor, allowing a nonoffending parent or guardian to retain~~

~~1 custody as long as that parent or guardian presents a plan
2 acceptable to the court demonstrating that he or she will be able to
3 protect the child from future harm.~~

~~4 (2) The parent or guardian of the minor is unwilling to have
5 physical custody of the minor, and the parent or guardian has been
6 notified that if the minor remains out of their physical custody for
7 the period specified in Section 366.25 or 366.26, the minor may
8 be declared permanently free from their custody and control.~~

~~9 (3) The minor is suffering severe emotional damage, as
10 indicated by extreme anxiety, depression, withdrawal, or
11 untoward aggressive behavior toward self or others, and there are
12 no reasonable means by which the minor's emotional health may
13 be protected without removing the minor from the physical
14 custody of his or her parent or guardian.~~

~~15 (4) The minor or a sibling of the minor has been sexually
16 abused, or is deemed to be at substantial risk of being sexually
17 abused, by a parent, guardian, or member of his or her household,
18 or other person known to his or her parent, and there are no
19 reasonable means by which the minor can be protected from
20 further sexual abuse or a substantial risk of sexual abuse without
21 removing the minor from his or her parent or guardian, or the
22 minor does not wish to return to his or her parent or guardian.~~

~~23 (5) The minor has been left without any provision for his or her
24 support, or a parent who has been incarcerated or institutionalized
25 cannot arrange for the care of the minor, or a relative or other adult
26 custodian with whom the child has been left by the parent is
27 unwilling or unable to provide care or support for the child and the
28 whereabouts of the parent is unknown and reasonable efforts to
29 locate him or her have been unsuccessful.~~

~~30 (d) The court shall make a determination as to whether
31 reasonable efforts were made to prevent or to eliminate the need
32 for removal of the minor from his or her home or, if the minor is
33 removed for one of the reasons stated in paragraph (5) of
34 subdivision (c), whether it was reasonable under the circumstances
35 not to make any of those efforts. The court shall state the facts on
36 which the decision to remove the minor is based.~~

~~37 (e) The court shall make all of the findings required by
38 subdivision (a) of Section 366 in either of the following
39 circumstances:~~

1 ~~(1) The minor has been taken from the custody of his or her~~
2 ~~parent or guardian and has been living in an out-of-home~~
3 ~~placement pursuant to Section 319.~~

4 ~~(2) The minor has been living in a voluntary out-of-home~~
5 ~~placement pursuant to Section 16507.4.~~

6 ~~SEC. 3. Section 726 of the Welfare and Institutions Code is~~
7 ~~amended to read:~~

8 ~~726. (a) In all cases in which a minor is adjudged a ward or~~
9 ~~dependent child of the court, the court may limit the control to be~~
10 ~~exercised over the ward or dependent child by any parent or~~
11 ~~guardian and shall in its order, clearly and specifically set forth all~~
12 ~~those limitations, but no ward or dependent child shall be taken~~
13 ~~from the physical custody of a parent or guardian, unless upon the~~
14 ~~hearing the court finds one of the following facts:~~

15 ~~(1) That the parent or guardian is incapable of providing or has~~
16 ~~failed or neglected to provide proper maintenance, training, and~~
17 ~~education for the minor.~~

18 ~~(2) That the minor has been tried on probation while in custody~~
19 ~~and has failed to reform.~~

20 ~~(3) That the welfare of the minor requires that custody be taken~~
21 ~~from the minor's parent or guardian.~~

22 ~~(b) Whenever the court specifically limits the right of the~~
23 ~~parent or guardian to make educational decisions for the minor, the~~
24 ~~court shall at the same time appoint a responsible adult to make~~
25 ~~educational decisions for the child until one of the following~~
26 ~~occurs:~~

27 ~~(1) The minor reaches 18 years of age, unless the child~~
28 ~~chooses not to make educational decisions for himself or herself,~~
29 ~~or is deemed by the court to be incompetent.~~

30 ~~(2) Another responsible adult is appointed to make educational~~
31 ~~decisions for the minor pursuant to this section.~~

32 ~~(3) The right of the parent or guardian to make educational~~
33 ~~decisions for the minor is fully restored.~~

34 ~~(4) A successor guardian or conservator is appointed.~~

35 ~~(5) The child is placed into long-term foster care pursuant to~~
36 ~~paragraph (3) of subdivision (g) of Section 366.21, Section~~
37 ~~366.22, or Section 366.26, at which time the foster parent or a~~
38 ~~foster care residential treatment provider who is the primary~~
39 ~~caregiver shall have the right to represent the child in educational~~
40 ~~matters pursuant to Section 56055 of the Education Code.~~

~~An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational decisions. For purposes of this section, “an individual who would have a conflict of interest,” means a person having any interests that might restrict or bias his or her ability to make educational decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorneys’ fees for the provision of services pursuant to this section. A foster parent or a foster care residential treatment provider who is the primary caregiver may not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.~~

~~(c) In any case in which the minor is removed from the physical custody of his or her parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.~~

~~As used in this section and in Section 731, “maximum term of imprisonment” means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.~~

~~If the court elects to aggregate the period of physical confinement on multiple counts or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the “maximum term of imprisonment” shall be the aggregate term of imprisonment specified in subdivision (a) of Section 1170.1 of the Penal Code, which includes any additional term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1 of the Penal Code, and Section 11370.2 of the Health and Safety Code.~~

~~If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the~~

1 ~~“maximum term of imprisonment” is the longest term of~~
2 ~~imprisonment prescribed by law.~~

3 ~~“Physical confinement” means placement in a juvenile hall,~~
4 ~~ranch, camp, forestry camp or secure juvenile home pursuant to~~
5 ~~Section 730, or in any institution operated by the Youth Authority.~~

6 ~~Nothing in this section shall be construed to limit the power of~~
7 ~~the court to retain jurisdiction over a minor and to make~~
8 ~~appropriate orders pursuant to Section 727 for the period permitted~~
9 ~~by Section 607.~~

